

### REMARKS

In the Office Action July 9, 2008, the claims are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph. Claims 1-5 and 11 -16 are rejected under 35 U.S.C. §102(b). Claim 6-10 and 17-20 are rejected under 35 U.S.C. §103(a). Claims 1-20 are subject to three obviousness typed double patenting rejections.

Accordingly, claims 1, 3, 4, 5, and 6 have been revised to more specifically define the features of Applicants' invention. Claims 2 and 11-20 have been cancelled as the features of such claims are presented in the remaining claims. Claims 21-37 have been withdrawn.

For the following reasons, it is respectfully submitted that Applicants' invention as set forth in claims 1 and 3-10 is particularly pointed out and distinctly claimed, and, further, includes features which are not anticipated or rendered obvious by the cited references, taken singly or in any permissible combination. Reconsideration is, therefore, respectfully requested. Only the remaining pending claims will be discussed with regard to each of the rejections raised by the Examiner.

Claims 1 and 3-10 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph. The issues raised by the Examiner have been addressed in the revised claims submitted herewith.

In view of such claim revisions, it is respectfully submitted that Applicants' invention as set forth in claims 1 and 3-10 is particularly pointed out and distinctly claimed as required by 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

Claims 1 and 3-5 are rejected under 35 U.S.C. § 102(b) as anticipated by Hudson. The Examiner contends that Hudson discloses all of the features of Applicants' invention as set forth in claim 1 and claims 3-5 depending therefrom and further notes that Fig. 5 of Hudson shows opposed C-shaped clamps 42-43 having a central wall, legs and teeth shaped extending

projections (not indexed) “releasibly engageable with an open ended aperture/recess 45 formed in the plate by ridge 41.”

However, it respectfully that Applicants’ invention as set forth in claim 1, and claims 3-5 which depend therefrom, includes features which are not taught by Hudson. Both embodiments shown in Figs. 1 and 5 of Hudson are devoid of any teaching of a plate having wells extending in a microtiter well spacing. The slotted block 12 in the Fig 1 embodiment of Hudson has slots arranged to cover one entire column of each of the underlying gasket wells and areas 6 in the bottom support plate. In the Fig. 5 embodiment of Hudson, the edge gasket 40 and the block 12 have a single large well surrounding all of the areas 6 in the bottom support plate 5.

Thus, Hudson is devoid of a plate having a plurality of wells extending in a microtiter well spacing which combine with microtiter well spaced wells in the gasket to form reaction chambers about each reaction surface on the substrate as set forth by the Applicants in claim 1.

Further, the clamps in Fig. 5 embodiment of Hudson engage the bottom support and an upper border frame superimposed over the slotted block 12. The clamps of Hudson, therefore, do not engage opposed edges of the plate and the substrate as set forth by the Applicants in claim 1 due to the interposition of the border frame on top of the block 12 in Fig. 5 of Hudson.

Further, with respect to claim 3, Applicants’ traverse the Examiner’s interpretation of the Fig. 5 embodiment of Hudson that the clamps 42, 43 have teeth shaped extending projections releasibly engageable with an open ended aperture/recess 45 formed in the plate by ridge 41.

First, the open ended aperture/recess 45 in the block 12 and the border frame 41 are not engaged by the clamps as the clamp members only contact the top surface of the border frame and a surface of the bottom support plate 5. Hudson is devoid of an open-ended aperture in the plate engaged by a projection carried by at least one of the clamp members as set forth by the

Applicants in claim 3. The element 41 in Fig 5 of Hudson is defined in column 10, line 9 as a border frame 41. The description of the Fig 5 embodiment of Hudson is devoid of any cooperating aperture and projection, such as the aperture 210 and the projection 208 shown in Fig. 12 of Applicants' application. Therefore, it is respectfully submitted that Applicants' invention as set forth in claim 3 patentably defines over Hudson in its own right in addition to its dependency from claim 1 and the features of claim 1 which are enumerated above as lacking in Hudson.

Claims 6-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hudson in view of McGrath and further in view of Juncosa.

The Examiner notes that Hudson does not teach an array of co-planar substrate-gasket plates stacks joined by clamps. The Examiner cites McGrath for purportedly disclosing a system of co-planar stack slides arranged in a bottom tray with each stack being individually joined by clamps. The Examiner also cites Juncosa for disclosing a co-planar array of assay devices comprising stacked slides as shown in Figs 13 and 14.

The Examiner combines these selected teachings of Hudson, McGrath and Juncosa and concludes that it would have been within an ordinary skill of an artisan at the time the invention was made to have arranged the diagnostic devices of Hudson in a similar manner, that is, in a tray supported co-planar array having micro-titre format.

The portion of McGrath the Examiner bases her contention that McGrath teaches stacks individually joined by clamps in column 10, line 60 +clearly indicates that the clamping means act on the entire cassette 70 to move each individual clip into and out of engagement with the seal means. This is not the same as set by the Applicants' in claim 6 in which each stack of side by side arranged plate, gasket and substrate are joined by each pair of clamped members. The

individual slides and seal in McGrath are not joined by a pair of clamps into a individual stack, which is capable of independent manipulation as a stack separate from other stacks.

Both Hudson and McGrath are similar in that the entire set of substrates, gaskets and slotted plates are secured together by clamps, rather than C-clamps engaging each individual stack of a plate, gasket and substrate or slide.

The Examiner cites Juncosa as disclosing a plurality of devices positioned in a support base where the devices can be provided in 96 well microtitre format.

However, Juncosa is devoid of any teaching of C-clamps which engage the plate and substrate of each individual stack of the array of stacks. However Juncosa is devoid of any teachings of discrete clamps as the notched ends of each plate in Juncosa fit within notched recesses in the support. There is no interaction between the notched ends and the recesses between the plate and the substrate in Juncosa.

Thus, for these reasons it is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of Applicants' invention as set forth in claims 6-10 based on any permissible combination of Hudson, McGrath and Juncosa. The features noted above of Applicants' invention are lacking in the cited references such that it would not have been within the ordinary skill of an artisan at the time the Applicants' made the invention in claims 6-10 to arrange the diagnostic devices of Hudson in a manner similar to that set forth by the Applicants in claims 6-10 which depend ultimately from claim 1.

Claim 1 is rejected under the doctrine of obviousness-type double patenting is being unpatentable over claims 1, 5, 6, 26, 30 and 31 of U.S. Pat. 7,063,979.

However, Applicants traverse the Examiner's obviousness-typed doubled patenting rejection based on US Pat 7,063,979. The Examiner has specifically noted that the difference

between Applicants' invention and that of US Pat. 7,063,979 is clamps used for compressing and connecting the substrate-gasket-plate stacks. The Examiner concludes that it would have been obvious to modify the patented invention to include clamps. However, it respectfully submitted that Applicants' invention as set forth in 1 and 3-10 defines clamp features which are not rendered obvious by the cited patent. Even if it were conceivable that one of ordinary skill in the art could add clamps to the structure of US Pat. 7,063,979, such clamps would not have the features set forth by the Applicants in claims 1 and 3-10 unless Applicants own invention is impermissibly used for teaching for such clamped microtiter well array features. Thus, withdrawal of the obviousness-type double patenting rejection based on US Pat. 7,063,979 is respectfully requested.

Claim 1 and 3-10 are provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over certain claims of co-pending application 10/349,347.

It is pointed out that the present application is a continuation-in-part of the cited co-pending application 10/349,347. It is respectfully submitted that Applicant's specific clamp features set forth in the subject application are not an obvious modification of the invention claimed in the co-pending application; but represent a patentably distinct improvement over the claimed subject matter of the co-pending application. Therefore, withdrawal of the obviousness-type double patenting rejection over the listed claims of co-pending application 10/349,347 is respectfully requested.

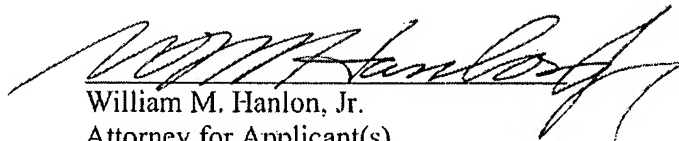
Claims 1 and 3-10 are provisionally rejected under the doctrine obviousness-typed double patenting as being unpatentable over claims 1-8, 15 and 16 of co-pending application 11/236,979.

It is pointed out to the Examiner the cited co-pending application 11/236,979 is a continuation-in-part of the present application. The present application was filed more than one year prior to the filing date of the cited co-pending application 11/236,979 thereby rendering the co-pending application 11/236,979 unusable as a citable reference against Applicants' presently claimed invention. Withdrawal of the double patenting rejection over co-pending application 11/236,979 is respectfully requested.

For the reasons set forth above, it is respectfully submitted that Applicants' invention as set forth in claims 1, and 3-10 patentably defines over the cited references and is not anticipated or rendered obvious by such cited references taken singly or in any permissible combination. Therefore, claims 1 and 3-10 are submitted to be in condition for allowance; a notice of which is respectfully requested.

Respectfully submitted,

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